

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

FILED  
APR 07 2009  
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UNITED STATES OF AMERICA, \* CR 08-30085 (01)

Plaintiff, \*

-VS-

BERT CECIL LAFFERTY, JR., \*

Defendant. \*

\*\*\*\*\*

UNITED STATES OF AMERICA, \* CR 08-30102 (01)

Plaintiff, \*

-VS-

PATRICK SCOTT POMANI, \*

Defendant. \*

\*\*\*\*\*

**ORDER AND OPINION**

Defendant Pomani has filed a motion (Doc. 21) to dismiss the indictment with a supporting memorandum (Doc. 22). Defendant Voice filed a motion (Doc. 15) to dismiss the indictment and the government filed a response (Doc. 19). Defendant Lafferty filed a motion (Doc. 19) to dismiss with a supporting memorandum of law (Doc. 20) and an amended supporting memorandum (Doc. 22) and the government filed a response (Doc. 21). United States Magistrate Judge Moreno conducted an evidentiary hearing on

February 12, 2009. This was a consolidated hearing and covered United States v. Lafferty, 08-30085, United States v. Voice, 08-30101, and United States v. Pomani, 08-30102. All defendants and counsel for all parties were present. I have conducted a *de novo* review of the Pomani transcript (Doc. 26) and the transcript (Doc. 29) of a continued hearing as to defendant Pomani only in 08-30102. I have conducted a *de novo* review of the Lafferty transcript (Doc. 27). I have read and considered all other documents and the numerous exhibits.

Chief Judge Schreier is the presiding judge in Voice.

The magistrate issued a report and recommendation (Doc. 30) in Pomani. The recommendation is to deny the motion to dismiss.

Defendant Pomani timely filed objections (Doc. 33) dealing with the recommendation as to the motion to dismiss which objections are without legal merit.

The magistrate issued a report and recommendation (Doc. 26) in Lafferty. The recommendation is to deny the motion to dismiss.

Defendant Lafferty timely filed objections (Doc. 33) dealing with the recommendation as to the motion to dismiss which objections are without legal merit.

The various reports and recommendations should be adopted, the suppression motions denied, and the objections overruled.

Now, therefore,

IT IS ORDERED, as follows:

- 1) The motion (Doc. 21) to dismiss the indictment in Pomani is denied.
- 2) The report and recommendation in Pomani (Doc. 30) is adopted.
- 3) The objections (Doc. 33) of defendant Pomani to the report and recommendation are overruled.
- 4) The motion (Doc. 19) to dismiss the indictment in Lafferty is denied.
- 5) The report and recommendation in Lafferty (Doc. 26) is adopted.

3) The objections (Doc. 33) of defendant Lafferty to the report and recommendation are overruled.

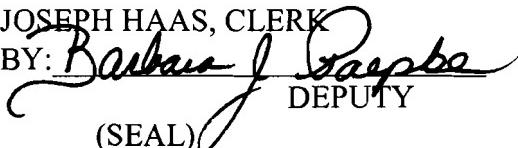
Dated this 6<sup>th</sup> day of April, 2009.

BY THE COURT:

  
CHARLES B. KORNMANN  
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY:   
Barbara J. Pasiba  
DEPUTY  
(SEAL)